IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 218 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned * Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

DILIPSINH KANUBHAI ZALA

Versus

STATE OF GUJARAT

---

Appearance:

1. Special Civil Application No. 218 of 2003

MS SMITA R PATEL for Petitioner No. 1

MS SUBHADRA G PATEL for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

---

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 22/05/2003

ORAL JUDGEMENT

The petitioner-detenu, in this petition, has

challenged his order of detention dated 26.11.2002 passed by the Commissioner of Police, Rajkot, respondent No.2 herein, under the provisions of Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

In the grounds of detention of even date, the detaining authority has relied upon five Prohibition cases registered against the petitioner by Malaviyanagar Police Station, Rajkot and also relied upon the statements of two witnesses for the alleged illegal activities of the petitioner with regard to the incidents which took place on 16.6.2002 and 29.8.2002 and the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act.

This petition is required to be allowed on the first submission advanced on behalf of the petitioner by the learned Counsel. Learned Counsel for the petitioner submits that there is an inordinate delay of about two months in passing the order of detention. The detaining authority has not properly explained the said delay and therefore, the order of detention is required to be quashed and set aside.

As stated above, out of the five Prohibition cases registered against the petitioner, the last case is registered on 27th September 2002 and the order of detention is passed on 26.11.2002, i.e. after about two months. Having gone through the affidavit-in-reply, I am of the opinion that the detaining authority has not properly explained the delay in passing the order of detention and has simply relied upon the subsequent two unregistered cases on the basis of the statements of the two witnesses recorded on 21.11.2002. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. In my opinion, this unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. This view of mine is supported by a decision of this Court rendered in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City and ors., reported in 1997(1) G.L.H. 381.

In the result, the petition is allowed. The impugned order of detention dated 26.11.2002 passed

against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.